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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/509,804	09/30/2004	Thomas Bruemmer	F-8389	9653

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EXAMINER	
LEFF, STEVEN N	

ART UNIT	PAPER NUMBER
1794	

MAIL DATE	DELIVERY MODE
10/16/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/509,804	BRUEMMER, THOMAS	
	Examiner	Art Unit	
	STEVEN LEFF	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 June 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-4,6,7 and 9-22* is/are pending in the application.

4a) Of the above claim(s) *9,21 and 22* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-4, 6-7 and 10-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

The information disclosure statement filed 2/22/05 fails to comply with 37 CFR 1.98(a)(1), which requires the following: (1) a list of all patents, publications, applications, or other information submitted for consideration by the Office; (2) U.S. patents and U.S. patent application publications listed in a section separately from citations of other documents; (3) the application number of the application in which the information disclosure statement is being submitted on each page of the list; (4) a column that provides a blank space next to each document to be considered, for the examiner's initials; and (5) a heading that clearly indicates that the list is an information disclosure statement. The information disclosure statement has been placed in the application file, but the information referred to therein has not been considered. It is noted that the ids of 2/22/05 does not currently provide a list of the information submitted for consideration by the Office where it is noted that the search report only appears listed on the cover sheet and not on an accompanying list of references.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

- Claims 1-3, 10, 12-16 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stearns et al. (3256115) in view of Mys et al. (FR 2640472).

Stearns et al. teach a method for producing a starch mixture comprising mixing flour as a first component (col. 1 lines 11-13), with a second component containing at least water (col. 3 Lines 69-75 and col. 4 line 1), in an extruder (col. 2 lines 11-15) where the total water content of the mixture containing the flour and the second component is less than 40 % by weight (col. 3 lines 69-75 and col. 4 line 1), maintaining a cooking temperature between 260F (126.6C) and 330F (165C) in the extruder (col. 2 lines 12-13), air drying the extrudate emerging from the extruder (col. 4 lines 27-28), and grinding the dried extrudate (col. 4 lines 30-31).

Stearns et al. continue by teaching that the initial water content of the first component is 15 % by weight (col. 3 line 70), an optimal moisture content is at least 20%, in addition to teaching adding water to the extruder during the mixing process for achieving the desired moisture (col. 3 lines 69-75 and col. 4 line 1), such that the total water content of the mixture containing the first component and the second component is between 15-20% (col.5 line 38), and further adding water to the finally dried and ground product (col. 5 lines 57-58). Stearns further teaches adding an alkali (col. 4 lines 4-9).

With respect to claims 12 and 20 it is noted that these claims do not provide an additional step in the making of the product, and thus Stearns et al. is taken to meet all of the method steps with respect to claims 12 and 20 since these claims are directed to an intended method of using the product as opposed to the method of making the product, however it is noted that Stearns et al. does teach the composition being used as a paper paste (col. 5 lines 54-55).

However Strearns et al. is silent with respect to further screening the extrudate after air drying, where the maximum screen size is about 4mm, and more preferably 1mm to 3mm.

Mys et al. teach a method of manufacturing cereal granules. More specifically Mys et al. teach moistening an initial dry cereal mixture and cooking the mixture in an extruder, followed by grinding the mixture in a grinder with a screen having openings of at least approximately 2.4 mm in diameter (English abstract).

Therefore although Stearns et al. is silent with respect to teaching a specific screen size, Stearns et al. does teach that the final product is "ground" (col. 4 line 30) and thus one of ordinary skill in the art would have been motivated to combine the teachings and taught a specific screen size as is taught by Mys et al. since Stearns et al. desire a

final "flaky or powdery product" (col. 1 line 26) which is capable of being dispersible in water.

Therefore since one of ordinary skill in the art would not expect the method of the instant claims to perform differently than the prior art method, thus the claimed method is not patentably distinct from the prior art method (See MPEP 2144.04 IV A) and thus it would have been obvious to one of ordinary skill in the art to teach a specific desired screen size since all the claimed elements were known in the prior art and one skilled in the art could have further provided screening in conjunction with the grinding as is taught by Stearns et al. with no change in their respective functions, thus yielding predictable results to one of ordinary skill in the art at the time of the invention for obtaining a highly dispersible ground starch material as is desired by Stearns et al.

With respect to the water temperature which is introduced in the starch mixture being between 20 and 70C or 30-60C, Stearns et al. desire to provide high dispersability of the final product in cold water (col. 1 line 13). Therefore since the water solubility of the starch material is a function of the size of the starch particles and the temperature of the water which is being used to dissolve or disperse the particles in order to form the starch mixture, it would have been obvious to one of ordinary skill in the art to teach the water temperature which is introduced in the starch mixture being between 20 and 70C or 30-60C in order to ensure proper dispersability of the starch particles within the water since the increased temperature would increase the rate of the dispersing of the starch particles thereby reducing the amount of time which is required to obtain a specific end product.

- Claims 1-3, 7, 10-16, 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stearns et al. (3256115) in view of Dudacek (6001408).

Stearns et al. is taken as above however Stearns et al. is silent to teaching the mixing and cooking taking place in a twin-screw extruder, rotating in the same direction at 200 to 1200 rpm., in addition to being silent with respect to teaching the water temperature in which the starch mixture is mixed is between 20 and 70C or 30-60C.

Dudacek teaches a method for producing a starch mixture comprising mixing a first component containing at least one starch (col. 5 lines 1-9), with a second component containing at least water (col. 5 lines 20-30), in an extruder (col. 6 line 5) where the total

water content of the mixture containing the first component and the second component is less than 40 % by weight (col. 5 lines 37-39, col. 9 lines 37-38), maintaining the temperature during a cooking processes in the extruder between 120° and 250°C (col. 9 line 40-43), drying the extrudate emerging from the extruder at normal room temperature (col. 8 lines 30-31), and grinding and screening the dried extrudate (col. 8 line 31, col. 9 lines 60-61, col. 3 lines 35-41).

Dudacek continues by teaching that the maximum screen size during screening is about 4 mm, or from about 1 mm to 3 mm (col. 8 lines 30-36), where it is noted that .027 inches equals .68 mm and that .128 inches equals 3.25 mm and that the initial water content of the first component is about 10-15 % by weight (col. 5 lines 8-9). In addition the mixing takes place in a twin extruder rotating in the same direction (col. 6 lines 30-31) at 200 to 1200 rpm (col. 9 lines 38-39), where the total water content of the mixture containing the first component and the second component is between 15-20% (col.5 line 38) where a moisture content of 20% is taught.

Therefore although Stearns et al. is silent to teaching the mixing and cooking taking place in a twin-screw extruder, rotating in the same direction at 200 to 1200 rpm., Stearns et al. does teach the method with respect to either starch "in their flour form or in the relatively purified starch form" (col. 2 lines 24-25) in addition to teaching applicants desired extrusion temperature, and moisture content thereof, and thus since Dudacek teaches that the temperature, the rotational screw speed, and/or the rate of feed into the extruder can be controlled (col. 7 lines 14-27), in addition to teaching that the electrical draw on the motor can be varied depending upon run conditions (col. 9 lines 45-48), one of ordinary skill in the art would have been motivated to combine the teachings of Stearns et al. and Dudacek since the normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages" (see MPEP 2144.05 IIA) to obtain the desired characteristics of the product as is taught by Dudacek (col. 7 lines 14-17).

Therefore since Stearns et al. further teach that the final product is a function "depending upon the factors of moisture content of feed, extrusion temperature, and kind and nature of the starchy material" (col. 4 lines 24-27) in addition to teaching applicants desired extrusion temperature, and moisture content thereof, with respect to either choice

of starch materials, and since one of ordinary skill in the art would not expect the method of the instant claims to perform differently than the prior art method, it would have been obvious to one of ordinary skill in the art to teach a specific extruder operating under specific operating conditions all the claimed elements were known in the prior art and one skilled in the art could have substituted the specific amount of energy which is introduced into the product with no change in their respective functions, thus yielding predictable results to one of ordinary skill in the art at the time of the invention.

It would have further been obvious since the mechanical energy, or rpm, which is introduced, is a function of the desired final product and the initial characteristics of the product, as is taught by Stearns et al. (col. 4 lines 24-27) and since Dudacek teaches that the temperature, the rotational screw speed, and/or the rate of feed into the extruder can be controlled (col. 7 lines 14-27), in addition to teaching that the electrical draw on the motor can be varied depending upon run conditions (col. 9 lines 45-48) and since MPEP 2144.04 IV A states "where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation," and thus the claimed method is not patentably distinct from the prior art method (See MPEP 2144.04 IV A).

With respect to the water temperature which is introduced in the starch mixture being between 20 and 70C or 30-60C, Dudacek teaches the addition of city water into the starch mixture to control the moisture content thereof (col. 9 lines 4-7), in addition to teaching the city water at a temperature of 67 F or 19C (col. 10 line 50) and further teaching the desire to provide high dispersability and no agglomerating (col. 7 lines 7-10), where the water solubility of the starch material is a function of the size of the starch particles and the temperature of the water which is being used to dissolve or disperse the particles in order to form the starch mixture. Therefore it would have been obvious to one of ordinary skill in the art to teach the water temperature which is introduced in the starch mixture being between 20 and 70C or 30-60C in order to ensure proper dispersability of the starch particles within the water since the increased temperature would increase the rate of the dispersing of the starch particles (col. 14 lines 35- col. 15 lines 20) thereby reducing the amount of time which is required to obtain a specific end product since the initial temperature of the starch mixture is higher thus reducing operating time which is desirable in order to reduce operating costs since the starch

product achieves its desired amount of working and/or heating in the motor driven extruder in a more time efficient manner.

Further, since the only difference between the prior art and the claims was a recitation of a specific range of water temperatures, and since one of ordinary skill in the art would not expect the method of the instant claims to perform differently than the prior art method, thus the claimed method is not patentably distinct from the prior art method (See MPEP 2144.04 IV A). "Where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation," (see MPEP 2144.05 IIA), as the normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages" (see MPEP 2144.05 IIA) to obtain the desired characteristics of the product as is taught by Dudacek (col. 7 lines 14-17).

Therefore it would have been obvious to one of ordinary skill in the art to teach the water temperature which is introduced in the starch mixture being between 20 and 70C or 30-60C since all the claimed elements were known in the prior art and one skilled in the art could have substituted the water temperature of Dudacek which is introduced into the product with no change in their respective functions, thus yielding predictable results to one of ordinary skill in the art at the time of the invention since the water temperature which is introduced is a function of the initial characteristics of the product, as well as other undefined rate dependent variables in order to ensure high dispersability and no agglomerating (col. 7 lines 7-10) and further to reduce the time of operation of the motor driven extruder.

- Claims 1, 3-4, 10-14, 16-17, and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stearns et al. (3256115) in view of Protzman et al. (3137592).

Stearns et al. is taken as above however Stearns et al. is silent with respect to further screening the extrudate after air drying, adding acid or alkali or the combination of the two to the mixture, in addition to being silent with respect to teaching the water temperature in which the starch mixture is mixed is between 20 and 70C or 30-60C.

Protzman et al. teaches a method for producing a starch mixture comprising mixing in an extruder (col. 4 line 45-47) a first component containing at least one starch

(col. 2 lines 3-27), with a second component containing at least water (col. 4 lines 53), where the total water content of the mixture containing the first component and the second component is less than 40 % by weight (col. 5 lines 41-44), maintaining the temperature during the mixing and cooking processes in the extruder between 120° and 250°C (col. 5 lines 70-75 through col. 8 line 1, col. 13 lines 67-68), drying the extrudate obtained in the extruder (col. 9 line 41), and grinding and screening the dried extrudate (col. 6 lines 39-40).

Protzman et al. continues by teaching that the initial water content of the first component is about 10-15% by weight (col. 9 lines 72-73), that the total water content of the mixture containing the first component and the second component is between 15-20% (col.12 line 37), in addition to teaching adding acid (col. 7 lines 15-45) or alkali or the combination of the two to the mixture (col. 8 lines 1-14) during mixing (col. 13 lines 19-24), that the mixture can be used as a binder for cellulose fibers (col. 7 lines 5-7), and that starch product is cold water soluble in water at a temperature of 25C. (col. 2 lines 28-44).

Therefore although Stearns et al. is silent with respect to teaching adding acid or alkali or the combination of the two to the mixture, in addition to being silent with respect to teaching the water temperature in which the starch mixture is mixed is between 20 and 70C or 30-60C, Stearns et al. does teach that the final product is a "ground" product (col. 4 line 30) which is dispersible in cold water in addition to teaching the method with respect to either starch “in their flour form or in the relatively purified starch form” (col. 2 lines 24-25). Further, since Protzman et al. does teach the desire to provide physically modified starch where the initial moisture content of the starch granules (col. 6 line 22) can be adjusted (col. 9 lines 72-73), which directly affects the viscosity of the starch product within, in addition to teaching the specific moisture content of the product as is taught by claim 1, in addition to teaching that the temperature, the rotational screw speed, and/or the rate of feed into the extruder can be controlled (col. 1 lines 10-17), with respect to any starch as the raw material (col. 2 lines 3-4), one of ordinary skill in the art would have been motivated to combine the teachings of Protzman et al. and Stearns et al. since the normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages” (see MPEP 2144.05 IIA) to obtain

the desired characteristics of the product as is taught by Protzman et al. (col. 9 lines 44-65).

With respect to the water temperature which is introduced in the starch mixture being between 20 and 70C or 30-60C, both Stearns et al. and Protzman et al. desire to provide high dispersability of the final product in water, where Protzman et al. further teaches the product being soluble in cold water and completely dispersible in hot water, thus forming a viscous paste (col. 12 lines 23-25). Therefore since the water solubility of the starch material is a function of the size of the starch particles and the temperature of the water which is being used to dissolve or disperse the particles in order to form the starch mixture, it would have been obvious to one of ordinary skill in the art to teach the water temperature which is introduced in the starch mixture being between 20 and 70C or 30-60C in order to ensure proper dispersability of the starch particles within the water since the increased temperature would increase the rate of the dispersing of the starch particles (col. 12 lines 23-25) thereby reducing the amount of time which is required to obtain a specific end product.

Further, since Protzman et al. teach “water solubility and water paste properties depend upon several factors" including specifically "the nature of the parent starch material and starch modifying reagent" (col. 6 lines 50-54) and since the only difference between the prior art and the claims was a recitation of a specific range of water temperatures, one of ordinary skill in the art would not expect the method of the instant claims to perform differently than the prior art method, thus the claimed method is not patentably distinct from the prior art method (See MPEP 2144.04 IV A). "Where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation," (see MPEP 2144.05 IIA), as the normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages” (see MPEP 2144.05 IIA) to obtain the desired characteristics of the product.

In addition, since Stearns et al. teaches the desire to achieve a thin boiling product (col. 3 lines 3-8) and further teaching that the starchy flours processed in the extruder will have an alkaline fluidity with the range of 20 to 70, with respect to starch “in their flour form or in the relatively purified starch form” (col. 2 lines 24-25) it would

have further been obvious to teach adding acid (col. 7 lines 15-45) or alkali or the combination of the two to the mixture (col. 8 lines 1-14) as is taught by Protzman et al. with respect to thin boiling starches as is further taught by Protzman et al. (col. 9 lines 71-75) for its art recognized and applicants intended purpose of promoting the reaction (col. 8 lines 1-14) to obtain the desired paste properties of the product as is taught by Protzman et al. (col. 1 lines 43-45).

- Claims 6 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stearns et al. (3256115) in view of Mys et al. (FR 2640472) as applied above and in further view of Neisser et al. (DE 4344139).

  Stearns et al. and Mys et al. are taken as above however both are silent with respect to the starch material being specifically rye flour.

  Neisser et al. teach forming a suspension of rye flour and water with an initial moisture content of 15% and extruding the suspension (abstract).

  Although neither Stearns et al. or Mys et al. teach the starch material being specifically rye flour, Stearns et al. do teach that any starchy material known and commercially used may be used as the starch flour, in addition to teaching the starch product being well known in cereals (col. 1 lines 26-27), where Neisser teaches the starch material being specifically rye flour (abstract). Thus one of ordinary skill in the art would have been motivated to combine the teachings since all teach the desire to extrude starch materials and one skilled in the art could have substituted the rye flour of Neisser et al. which is introduced into the product with no change in their respective functions, thus yielding predictable results to one of ordinary skill in the art at the time of the invention since.

  Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention by the applicant to have combine the teaching of and taught that the starch material is specifically rye flour, since in the instant case the specific rye starch does not provide a patentable distinction over the prior art since Neisser positively teaches the use of rye flour as the starch for it's art recognized purpose of forming starch mixtures which reduces the overall processing costs thereby increasing profits due to the less expensive rye flour as is taught by Neisser et al.

It would have been obvious to one of ordinary skill in the art at the time of the invention by the applicant to have combined the teaching of and taught that the starch material is specifically rye flour since combining the two methods, each of which is taught by the prior art to be useful for the same purpose of providing a starch product, flows logically from their having been individually taught in the prior art (see MPEP 2144.06), and since MPEP 2144.07 states that the selection of a known process based on its suitability for its intended use supports a prima facie obviousness determination.

- Claims 6 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stearns et al. (3256115) in view of Dudacek (6001408) as applied above and in further view of Neisser et al. (DE 4344139).

  Stearns et al. and Dudacek are taken as above however both are silent with respect to the starch material being specifically rye flour.

  Neisser et al. teach forming a suspension of rye flour and water with an initial moisture content of 15% and extruding the suspension (abstract).

  Although neither Stearns et al. nor Dudacek teach the starch material being specifically rye flour, Stearns et al. do teach that any starchy material known and commercially used may be used as the starch flour, in addition to teaching the starch product being well known in cereals (col. 1 lines 26-27), where Neisser teaches the starch material being specifically rye flour (abstract). Thus one of ordinary skill in the art would have been motivated to combine the teachings since all teach the desire to extrude starch materials and one skilled in the art could have substituted the rye flour of Neisser et al. which is introduced into the product with no change in their respective functions, thus yielding predictable results to one of ordinary skill in the art at the time of the invention since.

  Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention by the applicant to have combine the teaching of and taught that the starch material is specifically rye flour, since in the instant case the specific rye starch does not provide a patentable distinction over the prior art since Neisser positively teaches the use of rye flour as the starch for it's art recognized purpose of forming starch mixtures which reduces the overall processing costs thereby increasing profits due to the less expensive rye flour as is taught by Neisser et al.

It would have been obvious to one of ordinary skill in the art at the time of the invention by the applicant to have combined the teaching of and taught that the starch material is specifically rye flour since combining the two methods, each of which is taught by the prior art to be useful for the same purpose of providing a starch product, flows logically from their having been individually taught in the prior art (see MPEP 2144.06), and since MPEP 2144.07 states that the selection of a known process based on its suitability for its intended use supports a prima facie obviousness determination.

- Claims 6 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stearns et al. (3256115) in view of Protzman et al. (3137592) as applied above and in further view of Neisser et al. (DE 4344139).

Stearns et al. and Protzman et al. are taken as above however both are silent with respect to the starch material being specifically rye flour.

Neisser et al. teach forming a suspension of rye flour and water with an initial moisture content of 15% and extruding the suspension (abstract).

Although neither Stearns et al. or Protzman et al. teach the starch material being specifically rye flour, Stearns et al. do teach that any starchy material known and commercially used may be used as the starch flour, in addition to teaching the starch product being well known in cereals (col. 1 lines 26-27), where Neisser teaches the starch material being specifically rye flour (abstract). Thus one of ordinary skill in the art would have been motivated to combine the teachings since all teach the desire to extrude starch materials and one skilled in the art could have substituted the rye flour of Neisser et al. which is introduced into the product with no change in their respective functions, thus yielding predictable results to one of ordinary skill in the art at the time of the invention since.

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention by the applicant to have combine the teaching of and taught that the starch material is specifically rye flour, since in the instant case the specific rye starch does not provide a patentable distinction over the prior art since Neisser positively teaches the use of rye flour as the starch for it's art recognized purpose of forming starch mixtures which reduces the overall processing costs thereby increasing profits due to the less expensive rye flour as is taught by Neisser et al.

It would have been obvious to one of ordinary skill in the art at the time of the invention by the applicant to have combined the teaching of and taught that the starch material is specifically rye flour since combining the two methods, each of which is taught by the prior art to be useful for the same purpose of providing a starch product, flows logically from their having been individually taught in the prior art (see MPEP 2144.06), and since MPEP 2144.07 states that the selection of a known process based on its suitability for its intended use supports a prima facie obviousness determination.

Response to Arguments

With respect to the Ids statement filed 2/22/05, although the eight references were previously listed the it is noted that the ids does not currently provide a list of the information submitted for consideration by the Office as it is noted that the search report only appears listed on the cover sheet and not on an accompanying list of references.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Therefore although neither Dudacek nor Protzman et al. nor Neisser et al. teach flour, primary reference Stearns et al. does teach flour as the starch component.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986), where in the instant case Stearns et al. positively teaches air drying the extrudate emerging from the extruder (col. 4 lines 27-28).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action

is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Leff whose telephone number is (571) 272-6527. The examiner can normally be reached on Mon-Fri 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached at (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Drew E Becker/
Primary Examiner, Art Unit 1794

/Steven Leff/
Examiner, Art Unit 1794